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EXAMINER

CHANG, EDWARD

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PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary	Application No. 10/747,740	Applicant(s) WHIPPLE ET AL.	
	Examiner EDWARD CHANG	Art Unit 3692	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on February 20, 2009.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-25 is/are pending in the application.
- 4a) Of the above claim(s) 11-19 is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-10, 20-25 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____ |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

Status of Claims

1. This action is in reply to the RCE response filed on 20th of February 2009.
2. This is 2nd Non-final
3. Claims 1-10, 20-25 are currently pending and have been examined.
4. Claims 11-19 are cancelled.

Response to Arguments

5. Applicant's arguments filed 20th of February 2009 have been fully considered but they are not persuasive. Referring to the previous Office action, Examiner has cited relevant portions of the references as a means to illustrate the systems as taught by the prior art. As a means of providing further clarification as to what is taught by the references used in the first Office action, Examiner has expanded the teachings for comprehensibility while maintaining the same grounds of rejection of the claims, except as noted above in the section labeled "Status of Claims." This information is intended to assist in illuminating the teachings of the references while providing evidence that establishes further support for the rejections of the claims.

With regard to the limitations of claims 20-25, Applicant argues "...*Mazonas does not teach or relate to home mortgage loans...instead it teaches reverse mortgage...*" The Examiner respectfully disagrees. First of all, this is in the same field of endeavor. And also this is irrelevant because examiner used "Mazonas" to address the limitations mostly related to compensation paid to the servicer, which is not a "*home mortgage loan*" specific characteristic.

6. Other arguments with respect to claims 1-10, 20-25 have been considered but are moot in view of the new ground(s) of rejection.

Claim Rejections - 35 USC § 112

7. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

8. Claims **1-10 and 20-25** are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention. The body of the claim does not contain any limitations indicating the structure for processing. Currently for claim 1, the applicant is only claiming an "*executable instructions on a medium*" and a "*data storage system*". And as for claim 20, it is only claiming an "*executable instructions*". There is a lack of processor in the claims.

9. Claims **1-10** are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention. The limitation *...like ones...* is vague and indefinite because it is not clear how the claim is bounded. Please change the wording of the claim.

10. Claims **1-10 and 20-25** are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention. The limitation *...heightened sensitivity...* is vague and indefinite because it is not clear how the claim is bounded. Please change the wording of the claim.

Claim Rejections - 35 USC § 103

11. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

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(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

12. The factual inquiries set forth in *Graham v. John Deere Co.*, 383 U.S. 1, 148 USPQ 459 (1966), that are applied for establishing a background for determining obviousness under 35 U.S.C. 103(a) are summarized as follows:

1. Determining the scope and contents of the prior art.
2. Ascertaining the differences between the prior art and the claims at issue.
3. Resolving the level of ordinary skill in the pertinent art.
4. Considering objective evidence present in the application indicating obviousness or nonobviousness.

Examiner's Note: The Examiner has pointed out particular references contained in the prior art of record within the body of this action for the convenience of the Applicant. Although the specified citations are representative of the teachings in the art and are applied to the specific limitations within the individual claim, other passages and figures may apply. Applicant, in preparing the response, should consider fully the entire reference as potentially teaching all or part of the claimed invention, as well as the context of the passage as taught by the prior art or disclosed by the Examiner.

13. Claims 1, 7 and 25 are rejected under 35 U.S.C. 103(a) as being unpatentable over Graff (US 5,802,501) in view of Pullman (US 2003/0225653 A1).

As per Claim 1:

Graff as shown discloses the following limitations:

- *Computer-executable instructions tangibly embodied on computer readable media, the computer-executable instructions being executable by a computer to implement; (See at least Fig.2, Items 14, 28)*

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- *decomposing each of the plurality of home mortgage loans into a plurality of sub- loan level cash flows; (See at least Fig.1, Decomposing property into two components)*
- *repackaging the plurality of sub-loan level cash flows to form the financial assets, including:(See at least Column 1, Line 19+, produce documentation thereof, to facilitate financial transactions involving the separate components)*

However, Graff specifically does not mention the following limitations. But Pullman discloses the following limitations:

- *selecting a sub-combination of the plurality of sub-loan level cash flows, the sub-combination of sub-loan level cash flows comprising like-ones of the plurality of sub-loan level cash flows from across the plurality of home mortgage loans, and (See at least Page 2, Paragraph 0016+, "...selecting at least...", cash flow is related to mortgage loans but this is a obvious modification to exchange mortgage with IP)*
- *the sub-combination of sub-loan level cash flows exhibiting heightened sensitivity to at least one of the different types of sub-loan level risk relative to the sensitivity exhibited by the plurality of home mortgage loans as a whole. (See at least Page 1, Paragraph 0004+, "...includes both the risk...")*
- *packaging the sub-combination of sub-loan level cash flows to create one of the financial assets, the financial asset that is created accentuating the at least one of the different types of sub-loan level risk in accordance with the heightened sensitivity exhibited by the sub-combination of sub-loan level cash flows, thereby configuring the financial asset to operate as a hedge against a risk that opposes the at least one of the different types of sub-loan level risk, and (See at least Page 1, Paragraph 0011+, "...securitizing intellectual property assets...", it is obvious modification to exchange IP assets with mortgage assets)*
- *repeating the selecting and packaging steps to create additional financial assets, the additional financial assets including different financial assets which accentuate other*

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ones of the different types of sub-loan level risk; (See at least Page 1, Paragraph 0004+, "...Securitization transactions based...", more than one securitization is involved)

- *to make a determination of accounting rules that apply to the financial assets, the accounting tool further configured to track accounting data for the financial assets based at least in part on the accounting rules; and (See at least Page 4, Paragraph 0051~53)*
- *a data storage system configured to store accounting data for the financial assets. (See at least Fig. 9)*

Therefore, it would have been obvious to one of ordinary skill in the art at the time of the invention was made to modify the Graff's system/method of decomposing property into separately valued components as taught by Pullman's method for securitization of the IP asset to select and package the cash-flows into financial assets. The securitization of the asset greatly increases the cash flow in the company.

As per Claim 7:

Combination of Graff and Pullman discloses the limitations as shown in the rejections above.

Furthermore, Graff also discloses the following limitations:

- *apply accounting rules to the plurality of financial assets. (See at least Column 4, Line 36+, "...imposition of unusual bookkeeping requirements on fixed-income investors...")*

As per Claim 25:

Combination of Graff and Pullman discloses the limitations as shown in the rejections above.

Furthermore, Graff also discloses the following limitations:

- *wherein the financial assets are sold to different investors in the capital markets, thereby permitting the different investors to hedge against the risks that oppose the different types of sub- loan level risk. (See at least Fig.1, Item 8, 10, risk of high tax rate)*

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14. Claims 2-6, 8-10, and 21-24 are rejected under 35 U.S.C. 103(a) as being unpatentable over Graff in view of Pullman in further view of Frankel (US 6,070,151).

As per Claim 2:

Combination of Graff and Pullman discloses the limitations as shown in the rejections above.

But, combination of Graff and Pullman **as shown does not discloses the following limitation, but Frankel does:**

- *The plurality of sub-loan level cash flows include a first plurality of sub-loan level cash flows derived from principal payments of a borrower, (See at least Column 3, Line 29+)*
- *A second plurality of sub-loan level cash flows derived from interest payments of a borrower, (See at least Column 3, Line 29+)*
- *A third plurality of sub-loan level cash flows derived from borrower-paid fees. (See at least Column 1, 45+, "the difference ...is usually retained by the original mortgage lender as a fee")*

Therefore, it would have been obvious to one of ordinary skill in the art at the time of the invention was made to modify the Graff/Pullman's method as taught by Frankel's system to separate the cash flows into principal, interest, and fees to effectively manage these cash flows. When separated, *these securities are attractive and useful to a variety of investors that utilize them to hedge their assets against interest rate risks or to achieve other performance objectives.* (Frankel, Column 3, Line 9)

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As per Claim 3:

Combination of Graff and Pullman discloses the limitations as shown in the rejections above.

But, combination of Graff and Pullman **as shown does not discloses the following limitation,**

but Frankel does:

- *The plurality of sub-loan level cash flows include a sub-loan cash flow that is a negative cash flow from a perspective of one or more owners of the plurality of financial assets, (See at least Column 21, Line 35+)*
- *The negative sub-loan cash flow being associated with expenses incurred in connection with the respective loan and arising from borrower default. (See at least Column 21, Line 35+)*

Therefore, it would have been obvious to one of ordinary skill in the art at the time of the invention was made to modify the Graff/Pullman's method as taught by Frankel's system to consider the negative cash flow from the financial assets to make the cash flow more realistic, and effectively measure the performance of the financial assets.

As per Claim 4:

Combination of Graff and Pullman discloses the limitations as shown in the rejections above.

But, combination of Graff and Pullman **as shown does not discloses the following limitation,**

but Frankel does:

- *The second plurality of sub-loan level cash flows derived from interest payments include a cash flow associated with servicing fees, a cash flow associated with guarantee fees, and a cash flow associated with pass through interest. (See at least Column 1, Line 45+)*

Therefore, it would have been obvious to one of ordinary skill in the art at the time of the invention was made to modify the Graff/Pullman's method as taught by Frankel's system to separate the cash flows derived from the interest payments into pass through interest, servicing fees, and guarantee fees to effectively manage these cash flows. When separated, *these securities are*

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attractive and useful to a variety of investors that utilize them to hedge their assets against interest rate risks or to achieve other performance objectives. (Frankel, Column 3, Line 9)

As per Claim 5:

Combination of Graff and Pullman discloses the limitations as shown in the rejections above.

But, combination of Graff and Pullman **as shown does not discloses the following limitation, but Frankel does:**

- *Store information pertaining to a mapping relationship between the plurality of financial assets and the plurality of sub-loan level cash flows, (See at least Column 5, Line 18+)*
- *Mapping relationship describing a manner in which cash flows flowing into each of the plurality of financial assets are traceable back to the plurality of sub-loan level cash flows. (See at least Column 5, Line 18+)*

Therefore, it would have been obvious to one of ordinary skill in the art at the time of the invention was made to modify the Graff/Pullman 's method as taught by Frankel's system to map and store the relational data linked to different cash flows. This would help the user to effectively and efficiently manage plurality of data.

As per Claim 6:

Combination of Graff and Pullman discloses the limitations as shown in the rejections above.

But, combination of Graff and Pullman **as shown does not discloses the following limitation, but Frankel does:**

- *Display the information pertaining to the mapping relationship to a human operator. (See at least Column 9, Line 60+)*

Therefore, it would have been obvious to one of ordinary skill in the art at the time of the invention was made to modify the Graff/Pullman's method as taught by Frankel's system to display the

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steps and information related to the financial assets. This would allow the user to visually see and effectively manage the information related to the financial assets.

As per Claim 8:

Combination of Graff and Pullman discloses the limitations as shown in the rejections above.

But, combination of Graff and Pullman **as shown does not discloses the following limitation, but Frankel does:**

- *Display an impact of accounting on the financial performance of the plurality of financial assets. (See at least Column 26, Line 55+)*

Therefore, it would have been obvious to one of ordinary skill in the art at the time of the invention was made to modify the Graff/Pullman's method as taught by Frankel's system to display different performance information related to the financial assets. This would allow the user to visually see and effectively manage the information related to the financial assets.

As per Claim 9:

Combination of Graff and Pullman discloses the limitations as shown in the rejections above.

But, combination of Graff and Pullman **as shown does not discloses the following limitation, but Frankel does:**

- *Analyze financial risk associated with the plurality of sub-loan level cash flows and (See at least Column 3, Line 54+)*
- *Display a graphical representation of the financial risk to a human operator, (See at least Column 9, Line 60+)*

Therefore, it would have been obvious to one of ordinary skill in the art at the time of the invention was made to modify the Graff/Pullman's method as taught by Frankel's system to analyze and display the financial risks to the owners of the financial assets. This would help the owners to be more aware of the risks involved in the financial assets to make the right decisions regarding their financial assets.

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As per Claim 10:

Combination of Graff and Pullman discloses the limitations as shown in the rejections above.

But, combination of Graff and Pullman **as shown does not discloses the following limitation, but Frankel does:**

- *At least one of the plurality of financial assets is a financial instrument backed by borrower paid fees and not by principal or interest, (see explanation below)*
- *wherein an owner of the financial instrument is paid with funds derived from proceeds of borrower paid fees. (See at least Column 1, 45+, "the difference ...is usually retained by the original mortgage lender as a fee")*

Frankel specifically does not mention about reinvesting the earned borrower paid fees (See at least Column 1, 45+, "the difference ...is usually retained by the original mortgage lender as a fee") to back up the financial instruments, but it would have been obvious to one of ordinary skill in the art at the time of the invention was made to modify the Graff/Pullman's method as taught by Frankel's system to pay the owner with the borrower's paid fees and to use the paid fees to reinvest and efficiently grow the financial assets.

15. Claim 20 is rejected under 35 U.S.C. 103(a) as being unpatentable over Mazonas et al. (hereinafter "Mazonas"); (US 6,012,047) in view of Pullman (US 2003/0225653 A1).

As per Claim 20:

Mazonas as shown discloses the following limitations:

- *The servicer reporting logic further configured to relate the compensation to the value of the home mortgage loan, wherein compensation provided to the servicer does not decrease through time during a term of the loan; and (See at least Column 3, Line 42+, loan servicing module = servicer reporting logic, compensation = fixed payment)*

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However, Mazonas specifically does not mention the following limitations. But Pullman discloses the following limitations:

- *Computer-executable instructions tangibly embodied on computer readable media, the computer-executable instructions being executable by a computer to implement; (See at least Fig.9)*
- *repackaging the plurality of sub-loan level cash flows to form the financial assets, including: (See at least Page 1, Paragraph 0011+, "...securitizing intellectual property assets...", it is obvious modification to exchange IP assets with mortgage assets)*
- *selecting a sub-combination of the plurality of sub-loan level cash flows, the sub-combination of sub-loan level cash flows comprising compensation provided to the servicer from across the plurality of home mortgage loans, and (See at least Page 2, Paragraph 0016+, "...selecting at least...", cash flow is related to mortgage loans but this is a obvious modification to exchange mortgage with IP)*
- *the sub-combination of sub-loan level cash flows exhibiting heightened sensitivity to at least one of the different types of sub-loan level risk relative to the sensitivity exhibited by the plurality of home mortgage loans as a whole, (See at least Page 1, Paragraph 0004+, "...includes both the risk...")*
- *packaging the sub-combination of sub-loan level cash flows to create a financial asset, and (See at least Page 1, Paragraph 0011+, "...securitizing intellectual property assets...", it is obvious modification to exchange IP assets with mortgage assets)*
- *repeating the selecting and packaging steps to create additional financial assets, the additional financial assets including different financial assets which accentuate other types of sub-loan level risk. (See at least Page 1, Paragraph 0004+, "...Securitization transactions based...", more than one securitization is involved)*

Therefore, it would have been obvious to one of ordinary skill in the art at the time of the invention was made to modify the Mazonas's reverse mortgage processing system as taught by

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Pullman's method for securitization of the IP asset to select and package the cash-flows into financial assets. The securitization of the asset greatly increases the cash flow in the company.

16. Claim 21~24 is rejected under 35 U.S.C. 103(a) as being unpatentable over Mazonas in view of Pullman in further view of Frankel.

As per Claim 21:

Combination of Mazonas/Pullman discloses the limitations as shown in the rejections above.

Furthermore, Mazonas also discloses the following limitations:

- *the loan comprises a loan asset and a servicing asset, (See at least Column 2, Line 13+)*
- *the loan asset comprising a right to receive loan payments from a borrower in connection with the loan, (See at least Column 3, Line 42+)*

Combination of Mazonas/Pullman does not disclose the following limitation, but Frankel does.

- *the servicing fee portion of each loan payment decreases as an unpaid principal balance of the loan decreases. (See at least Column 1, Line 45+)*
- *the loan payments comprising a principal payment portion and an interest payment portion, (See at least Column 2, Line 3+)*
- *the servicing asset comprising a right to receive a servicing fee portion of the interest payment portion in exchange for performing servicing of the loan, (See at least Column 1, 45+, "the difference ...is usually retained by the original mortgage lender as a fee")*

Therefore, it would have been obvious to one of ordinary skill in the art at the time of the invention was made to modify the Mazonas/Pullman's method as taught by Frankel's system to separate and divide the payment cash inflow into interest part, principal part, and the servicing fee part. When separated, *these securities are attractive and useful to a variety of investors that utilize*

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them to hedge their assets against interest rate risks or to achieve other performance objectives.

(Frankel, Column 3, Line 9)

As per Claim 22:

The combination of Mazonas/Pullman/Frankel discloses the limitations as shown in the rejections above. Furthermore, **Mazonas as shown, also discloses the following limitations:**

- compensation provided to the servicer is substantially fixed during the term of the loan. (See at least Column 3, Line 42+, "the payment of fixed")

As per Claim 23:

The combination of Mazonas/Pullman/Frankel discloses the limitations as shown in the rejections above. Furthermore, **Mazonas as shown, also discloses the following limitations:**

- *compensation provided to the servicer increases during the term of the loan.* (See at least Column 3, Line 42+, "or variable periodic payments")

As per Claim 24:

The combination of Mazonas/Pullman/Frankel discloses the limitations as shown in the rejections above. Furthermore, **Frankel as shown, also discloses the following limitations:**

- *relating the compensation to the home mortgage loan includes valuing the compensation based on the value of the home mortgage loan.* (See at least Column 1, Line 45+)

Therefore, it would have been obvious to one of ordinary skill in the art at the time of the invention was made to modify the Mazonas/Pullman/Frankel's method as further taught by Frankel's system to base the servicer's compensation on the value of the home mortgage loan. This would effectively encourage the servicer to perform at a higher level for the higher home mortgage loans. 99

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Conclusion

Any inquiry of a general nature or relating to the status of this application or concerning this communication or earlier communications from the Examiner should be directed to **Edward Chang** whose telephone number is **571.270.3092**. The Examiner can normally be reached on Monday-Friday, 9:30am-5:00pm. If attempts to reach the examiner by telephone are unsuccessful, the Examiner's supervisor, **Kambiz Abdi** can be reached at **571.272.6702**.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://portal.uspto.gov/external/portal/pair> <<http://pair-direct.uspto.gov>>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at **866.217.9197** (toll-free).

Any response to this action should be mailed to:

Commissioner of Patents and Trademarks

P.O. Box 1450
Alexandria, VA 22313-1450

or faxed to **571-273-8300**.

Hand delivered responses should be brought to the **United States Patent and Trademark Office Customer Service Window**:

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May 19, 2009
/Edward Chang/ Examiner, Art Unit 3692

/Susanna M. Diaz/
Primary Examiner, Art Unit 3692